COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2012-219

DONNA CONLEE — APPELLANT

VS.

FINAL ORDER
SUSTAINING HEARING OFFICER'S
FINDINGS OF FACT, CONCLUSIONS OF LAW
AND RECOMMENDED ORDER

CABINET FOR HEALTH AND FAMILY SERVICES
J. P. HAMM, APPOINTING AUTHORITY — APPELLEE

** ** ** ** **

The Board at its regular June 2013 meeting having considered the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated April 23, 2013, having considered Appellee's exceptions, Appellant's response, oral arguments, and being duly advised,

IT IS HEREBY ORDERED that the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer be, and they hereby are approved, adopted and incorporated herein by reference as a part of this Order, and the Appellant's appeal is therefore **SUSTAINED.**

The parties shall take notice that this Order may be appealed to the Franklin Circuit Court in accordance with KRS 13B.140 and KRS 18A.100.

SO ORDERED this 19th day of June, 2013.

KENTUCKY PERSONNEL BOARD

MARK A. SIPEK, SECRETARY

A copy mailed this day to:

Hon. Elliott C. Miller
Hon. Marian Hogan
J.P. Hamm

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2012-219

DONNA CONLEE **APPELLANT**

V. **FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDED ORDER**

CABINET FOR HEALTH AND FAMILY SERVICES, J. P. HAMM, APPOINTING AUTHORITY **APPELLEE**

** ** ** ** **

This matter came on for an evidentiary hearing conducted over two days on January 9, 2013 and January 10, 2013, at 28 Fountain Place, Frankfort, Kentucky, before the Hon. Boyce A. Crocker, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

At the outset of the evidentiary hearing, and throughout, present for the Appellee were counsel, the Hon. Marian Hogan, and agency representative, Ms. April Davis. The Appellant, Donna Conlee, was also present at the evidentiary hearing as was her counsel, the Hon. Elliott C. Miller. With no objection, Ms. Conlee's husband, who did not testify as a witness, sat in for some of the proceedings.

The matter on appeal was Ms. Conlee's demotion, delivered by letter dated September 13, 2012. In that letter, the Appellant was demoted from the position of Field Services Supervisor, Pay Grade 15 with the Department for Community-Based Services (DCBS) in Fayette County, to the position of Family Support Specialist II, Pay Grade 11, with DCBS also in Fayette County. The Appellant's salary was also reduced from $3575.68 monthly to $2979.74 monthly. The allegations contained in the demotion letter were for unsatisfactory performance of duties. The burden of proof was upon the Appellee to demonstrate the disciplinary action taken was neither excessive nor erroneous, and was taken with a just cause.

There were no pre-hearing motions. Both parties made opening statements at the evidentiary hearing. As the party bearing the burden of proof, the Appellee proceeded first in the presentation of evidence.

SUMMARY OF TESTIMONY

1. The Appellee called as its first witness **Mr. Steve Courtney**. Mr. Courtney was, during the relevant times, a Service Region Administrator Associate (SRAA) in the region including Fayette County. Mr. Courtney was Appellant's supervisor during the relevant times.

2. Upon being properly sworn, Mr. Courtney provided the following testimony, which is presented in summary form.

3. Mr. Courtney offered some testimony about Appellant's training which she had received with the Cabinet for Health and Family Services (CHFS). The parties stipulated that Appellant had received significant training while employed at CHFS.

4. Mr. Courtney also testified to the documents included in the Appellee's Exhibit 2, which were various personnel actions taken against Appellant and were referenced in the letter of demotion.

5. Mr. Courtney discussed in some more detail the specific allegations contained in the letter of demotion, specifically, that one had 20 days to respond to a Quality Control Citation of Error. Mr. Courtney also gave testimony as to some of the specific Quality Control Citations which were listed jointly as Appellee's Exhibit 4. Appellee's Exhibit 4, as stated, includes the Quality Control Review errors cited in the letter of demotion.

6. Mr. Courtney gave testimony as on Appellee's Exhibit 7, which was a Grievance filed by Appellant against Mr. Courtney in 2010. Mr. Courtney contends nothing was substantiated in the EEO investigation into the Grievance filed by Appellant, which Mr. Courtney states was filed subsequent to his having requested a major disciplinary action against Appellant for her intervention into benefit claims filed by her sons. (This is the disciplinary action taken in 2010 referenced in and admitted as a part of Appellee's Exhibit 2.)

7. On cross-examination, counsel for the Appellant questioned Mr. Courtney about the documents contained in Appellee's Exhibit 2. Counsel also questioned Mr. Courtney about performance improvement plans which were admitted as Appellee's Exhibit 8. These performance improvement plans were from the calendar years 2008, 2010, 2011 and 2012. Mr. Courtney agreed with counsel for the Appellant that none of the performance improvement plans addressed Quality Control (QC) error rates.

8. Upon further questioning, Mr. Courtney stated the case load in Fayette County was determined by "case weight," and that adult medical was typically at 750, while the "generic units" would have anywhere between 950 to 1100. Mr. Courtney stated that the amount of staff working for Appellant when she was the Field Services Supervisor for the Adult Medical Unit was unstable throughout her tenure in that position. Upon further cross-examination, Mr. Courtney agreed that during 2011, Appellant had no principals working for her, so that Ms. Conlee had to review all the work of the probationary employees with no principals to review the work.

9. Mr. Courtney testified there was no QC error rate problem in the other units in Fayette County as QC did not review family-related medical cases, but instead concentrated on long-term care cases which are the most problematic and the most scrutinized by the federal government.

10. Counsel for the Appellant reviewed what was introduced as Appellant's Exhibit 3, which were several annual evaluations of the Appellant. Mr. Courtney reiterated that throughout her tenure as a supervisor, Appellant had problems with staff. Counsel pointed out several positive comments about Appellant's teamwork and work with staff on the evaluations.

11. During the course of cross-examination by counsel for the Appellant, Mr. Courtney testified that Appellant's conduct and communication had been improving (this was for the interim review in May 2011).

12. Counsel for the Appellant questioned Mr. Courtney why, when Conlee had five straight years of "highly effective" performance reviews (2007 to 2011 inclusive) was in 2012 a recommendation for demotion made. Mr. Courtney responded that he noticed QC error rates were "inordinate." According to Mr. Courtney, the reasons for the demotion were the QC error rates and the "Hospice" issue regarding alleged non-payment of a claim to Hospice. Mr. Courtney testified that aside from the issue raised in the demotion letter, he was unaware of any other issues with Hospice.

13. Mr. Courtney further testified that QC, when performing reviews, did not differentiate between errors, that is, major and minor, and they were all errors. Mr. Courtney testified Appellant's QC error rates were generally in line with those statewide (at the time of her demotion), but that since she was personally signing off on the cases he wouldn't have expected that rate.

14. Following re-direct and re-cross, Mr. Courtney's testimony was concluded on the first day of the evidentiary hearing.

15. Appellee's next witness was **Mr. Jerry Gross**. Mr. Gross is a Program Specialist with CHFS, mainly dealing with Medicaid.

16. Mr. Gross testified that one of his job expectations was to review cases for errors, including Ms. Conlee's cases, as well as principal workers and those with case-decision authority.

17. Mr. Gross offered testimony about the Hospice of the Bluegrass allegation, specifically, what the effects would be if a provider such as Hospice was not paid in a timely fashion and also how he came to be involved in the matter.

18. On cross-examination, Mr. Gross testified he was aware there was a high turnover rate in Appellant's unit, and that one of the reasons was some of the workers wanted to get away from Appellant.

19. Mr. Gross also testified there was an issue with error rates both in Fayette County and also statewide. Mr. Gross testified that his only involvement with the Hospice issue as detailed in the letter of demotion was that he was contacted by e-mail and he passed this information along. Mr. Gross also testified he had heard that there had been issues in the past with Hospice submitting bills late.

20. The next witness called by the Appellee was **Ms. Grace Akers**. Ms. Akers was the Service Region Administrator during the relevant times for the region which included Fayette County. Ms. Akers, as the second-line supervisor for the Appellant, offered testimony that she, Mr. Courtney and others arrived at the decision to request major disciplinary action (MDA) regarding Appellant.

21. Ms. Akers testified that regarding the MDA, there were a couple of issues; one being the error rate on her team, and the other being that most of those errors had been approved by Appellant. Ms. Akers stated that when compared to other units, this was by far the highest error rate, especially having been approved by the supervisor.

22. Regarding the allegation in the demotion letter which deals with payments to Hospice of the Bluegrass, Ms. Akers stated she did not come up with the $400,000 figure, and that was provided by the "Community Partner" (Hospice.) Ms. Akers stated she did not know how many providers there were that Appellant's unit would have dealt with.

23. On re-direct examination, Ms. Akers reiterated while other supervisors' units may have had error rates, they (the supervisors) had not personally reviewed and signed off on some of the cases which later checked out for errors and that this was a factor.

24. The next witness to offer testimony was **Mr. Howard J. Klein**, who stated he is the Acting Division Director for Employee Management.

25. Mr. Klein testified as to the excessive number of adult medical benefit errors (as cited in the letter of demotion), the failure to have cited the errors, and the failure to have corrected the errors. Upon the conclusion of Mr. Klein's testimony, the Appellee rested its case.

26. Appellant called as her first witness **Mr. Kenton Clay Morton**. Mr. Morton said he worked in the Fayette County DCBS office as a Family Support Specialist III, also with a working title as a "Principal." Mr. Morton stated he had been a Principal since about February, 2012. Mr. Morton stated that in August 2010, he had begun working as a Family Support Specialist I (with a working title as "Worker") and he was given "case decision" approximately one year later.

27. Mr. Morton testified that typically there are approximately eight employees in Appellant's unit, but that one time it had gotten down to four or five employees who were actually able to work cases; there were other employees, but they did not have the ability to actually work cases because they were in training.

28. Mr. Morton testified that there "have been" problems with receiving bills from Hospice months late.

29. On cross-examination, Mr. Morton recalled that while working for Appellant, they would have weekly team meetings on Friday to go over QC reviews and what actions were recommended. Mr. Morton also testified that he had been contacted by Mr. Jerry Gross in regards to the Hospice issue and told to review some Hospice claims for payment as soon as possible and agreed with counsel for the Appellee that there was a sense of urgency.

30. The next witness called by the Appellant was **Mr. David Bachert**. At the time of the hearing, Mr. Bachert stated he was a Family Support Specialist III (Principal), and had worked for CHFS for approximately one and one-half years. Mr. Bachert stated he had become a Principal on August 2012, and he had been employed as a Worker for seven months before he got case decision.

31. Mr. Bachert had also been contacted by Mr. Jerry Gross during July 2012, regarding the Hospice issue when Appellant was out of town. Mr. Bachert stated he had processed some of these claims, but was not able to complete the ones he had been given and returned some to Appellant when she returned to the office.

32. Mr. Bachert stated that Hospice presented claims "through a variety of methods" and they did not always appear to be timely submitted.

33. The next witness to be called by the Appellant was **Ms. Marshay Boyd**. Ms. Boyd testified that she is a Family Services Support Supervisor in Fayette County and that she was, at the time of the evidentiary hearing, Appellant's supervisor. Ms. Boyd stated that she never actually mentored Appellant, even though she had been appointed as a mentor in a written reprimand authored by Mr. Steve Courtney.

34. Ms. Boyd testified it was a heavy workload on her team. The QC error rate was low, but she also did not deal with adult medical cases.

35. The next witness to be called by Appellant was **Ms. Amy McCall**. Ms. McCall stated she is currently a Quality Control Field Supervisor, has been since August 2007, and she transferred to Bourbon County sometime in 2007. Prior to that, she was the Adult Medical Field Services Supervisor in Fayette County from 2003 to 2007.

36. Ms. McCall testified she was the Adult Medical Field Services Supervisor (preceding Appellant). When she left she didn't have many Workers with case decision, perhaps four, perhaps no Principals, and that there had been heavy turnover.

37. Ms. McCall stated the QC error rate statewide is high, "unbelievable."

38. On the second day of the evidentiary hearing, **Appellant Donna Conlee** was called as the first witness.

39. Appellant stated at the time of the evidentiary hearing she was a Family Support Specialist II, having previously served as a Field Services Supervisor for approximately five years prior to her demotion. Appellant stated one of the expectations as FSS was to oversee a team which was supposed to have "eight Workers and two Principals, if fully staffed." Appellant stated that her team mainly did adult medical, which is Medicaid cases for adults, about 95% of the workload, with a small percentage, about 5%, for Food Stamps.

40. Appellant stated she didn't believe she was ever fully staffed, although she may have been for a brief period of time. Appellant testified that, for example, in January 2012, she started the year with seven Workers and three were gone by March 2012. At some point during 2012 she did have at least one Principal, Mr. Clay Morton. Appellant testified this was an extremely difficult program dealing with adult Medicaid, with high turnover and she wanted highly qualified people, even if she knew they would move on, because the cases were difficult. Appellant stated she only gave Principals cases to read, with no case load.

41. Appellant gave detailed testimony regarding how cases were reviewed, such as long-term cases, and the time and difficulty it takes to process such cases correctly. Appellant went on to give the testimony that she would be doing the work of three people during various points in her tenure as FSS, that is herself, and the two Principals she often did not have.

42. Appellant stated that she and Ms. Grace Akers, the SRA, had a "minimal relationship" due to the command structure, but that she had had a close relationship with Mr. Steve Courtney prior to her having filed a Grievance in 2010. After that, they did not communicate orally, because he would not, and they mainly communicated by e-mail. Appellant stated that her relationship with Mr. Courtney, in her mind, began to change after she had been off work for six weeks due to a doctor's recommendation sometime in early 2010. Appellant stated that during that time, Mr. Courtney would not return her phone calls and when she returned to work, she could tell that the "dynamic" between them had changed.

43. Appellant stated there were approximately 50 "providers" in Fayette County the adult medical unit would regularly deal with. (Appellant testified there were 72 in Lexington overall.) Appellant stated these providers were similar to Hospice in providing medical services to those who might need them. Appellant stated that Hospice is the only one of these providers who submits the paperwork "the way they do" and that they have "unrealistic expectations" on how they will be reimbursed. Appellant stated that Hospice is the only provider who would fax, e-mail and use regular mail to send in forms to begin the reimbursement process, which lead to confusion.

44. Appellant stated that when she took over as FSS in 2007, she continued meetings which Ms. Amy McCall had begun with Hospice and other providers, and that those meetings worked wonders except with Hospice, but things had been improving as a result of those meetings. Appellant stated that when Carmen Conley took over duties related to seeking reimbursement from the Cabinet with Hospice sometime in 2009, that improvement was lost. Appellant made clear that Hospice was the only provider who submitted forms late, and would often submit the forms for "admit" and the forms seeking payment at the same time, sometimes as much as two months after the client was dead.

45. Appellant continued to testify that oftentimes after Hospice had submitted a billing, a "special circumstance" would have be created by the Worker to get Hospice paid as the Medicaid client had already been discharged from CHFS' rolls due to death. This is an illustration of the lateness typical of Hospice billings. Appellant reiterated Hospice was the only one of the providers who the Adult Medicaid Unit deals with that would submit forms late, and that although they had improved briefly after her tenure as FSS began (for about a year and one-half), Hospice quickly reverted to form, which included late billings.

46. Appellant reviewed the second charge contained in the letter of demotion regarding unsatisfactory performance of duties, specifically Hospice billings. Appellant stated she was never notified of these issues, as she had been on vacation for six business days when, as Mr. Jerry Gross earlier testified, he had received an e-mail from Carmen Conley regarding billing issues. Appellant stated she was first notified of this either in the request for major disciplinary action or in the letter of demotion.

47. Appellant did state that Mr. Gross had spoken with her briefly about this when she had returned from vacation, but only to tell her that she needed to discuss the Hospice matter with Mr. Courtney. Appellant next heard about the issue when she was called into a meeting with Mr. Courtney and Ms. April Davis, and informed of the request for major disciplinary action.

48. Appellant testified that she had met with Ms. Susan Swinford and Ms. Carmen Conley of Hospice on February 16, 2012, but that she had never seen the list included on page 7 of the letter of demotion until she actually received the letter of demotion; that this was not a list which had been mailed to her by Carmen Conley. Appellant stated she disagreed with the spreadsheet listed in the letter of demotion on page 7. Appellant reviewed the spreadsheet attached to the letter of demotion as referenced above and noted that 18 of the 36 clients listed on there could not have been discussed at the February 16, 2012 meeting, as Hospice does not bill or fill out paperwork until a client is admitted, and 18 of these 36 clients listed in the letter of demotion had not been admitted as of February 16, 2012.

49. Appellant stated that a Medicaid case is processed where the client resides, but they can be applied for in any county. Appellant then reviewed specifically the allegations regarding Hospice.

50. Appellant contends that Clients #38, #42, #45, #46, #55, and #56 on the list on page 7 of the letter of demotion (the Hospice billings list) are not Fayette County residents, thus neither she nor her Workers would be responsible for processing those claims or paying those bills. Appellant states it is Hospice's responsibility to send the paperwork to the county where the Medicaid is processed.

51. Appellant continued, noting that five of the clients listed in the Hospice billings spreadsheet did not have Medicaid at all, and thus Hospice obviously cannot be paid Medicaid funds for same. Those were Clients #39, #51, #52, #62 and #66. Appellant also stated that Clients #63 and #65 on the Hospice billing list were there, but there had been a "glitch" in the program, and Hospice had been notified they needed to contact Central Office Billing regarding those two clients.

52. Appellant testified the meeting of February 16, 2012, was more than just billing complaints; it also had to do with issues of Hospice workers waiting to meet with CHFS Workers and that Appellant and the Hospice personnel worked out a system whereby Carmen Conley could e-mail Appellant when a Hospice worker needed to meet with a CHFS employee. The other issue resolved at the meeting was that Hospice, instead of sending in paperwork by multiple means, would instead send such paperwork by e-mail to Appellant, who would then forward it to her Workers, which would document the whole process.

53. Appellant, in referring to Appellee's Exhibit 5, and specifically referring to an e-mail chain between Carmen Conley and Steve Courtney, dated July 20, 2012 (four pages long), referenced a list of 22 Clients, which began on page 2 of that e-mail, and continued to page 4 of that e-mail. Appellant matched up some of the names of Clients with the Client numbers on the Hospice billing list on the letter of demotion as follows:

> Appellant stated that #1 in the e-mail, actually Client #31 in the Hospice billing list in the letter of demotion was a client and was on Constance Jones' caseload. (One of Appellant's Workers.)

Appellant clarified she was not sure if all these names were on the February 16, 2012 list, as that list apparently no longer exists, or she is not aware if it does.

> Appellant stated that #2 in the e-mail was Client #33 in the Hospice billing list in the letter of demotion. Appellant stated this was an SSI Client, and as such, would show up as a Special Circumstance in their computer, and due to however the computer program is set up, would not show back up on their computer, and if Hospice did not bill timely, they would have to complete special paperwork in order to get the provider paid.
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> Appellant stated that #3 in the e-mail was Client #35 in the Hospice billing list in the letter of demotion and was a Constance Jones case.

Appellant stated that #4 in the e-mail was Client #39 in the Hospice billing list in the letter of demotion, and was someone who was never a Client, having never had Medicaid.

Appellant stated that #5 in the e-mail was Client #40 in the Hospice billing list in the letter of demotion, and was David Bachert's case, who did not process it correctly.

Appellant stated that #6 in the e-mail was Client #41 in the Hospice billing list in the letter of demotion. Appellant states she did receive an e-mail from Carmen Conley on this Client, and she forwarded that to Constance Jones, whose case it was, on March 7, 2012.

Appellant stated that #8 in the e-mail was Client #42 in the Hospice billing list in the letter of demotion, and was not a Fayette County case.

Appellant stated that #11 in the e-mail was Client #47 in the Hospice billing list in the letter of demotion, and this was Erica Clark's case, another Worker for Appellant who, on KAMES, indicated she had received it, but did not process it correctly. Appellant stated that both Erica Clark and David Bachert had case decision, showing that Appellant would not be "going behind" those workers and reviewing their cases.

Appellant stated that #12 in the e-mail was Client #51 in the Hospice billing list in the letter of demotion. This person never had Medicaid.

Appellant stated that #15 in the e-mail was Client #58 in the Hospice billing list in the letter of demotion, and Appellant had an e-mail showing she had sent this to Clay Morton.

Appellant stated that #17 in the e-mail was Client #63 in the Hospice billing list in the letter of demotion. Appellant's unit had completed a Special Circumstance to pay for that admit time as listed on the e-mail, but Hospice did not bill timely, so Appellant's unit had to process by "Special Circumstance."

Appellant stated that #20 in the e-mail was Client #65 in the Hospice billing list in the letter of demotion. Appellant stated this was one of the computer glitches Appellant had referenced earlier which caused a problem with billing.

Appellant stated that #22 in the e-mail was not listed in the Hospice billing list in the letter of demotion, but Appellant stated this was not a Fayette County case in any event, thus her unit would not have been responsible for it.

54. As to the previous disciplinary and/or corrective actions introduced as Appellee's Exhibit 2, Appellant took issue with the written reprimand issued on July 19, 2006. Appellant

stated she did not start the confrontation with another employee, did admit it was unprofessional, but also stated she had told her supervisor (Steve Courtney) that she was leaving, though she did neglect to sign out when she left. Appellant states that at the time she did not think much of it, but looking back believes it was an overreaction to have received a written reprimand.

55. As to the written reprimand of May 29, 2008, Appellant testified she had an opportunity to actually meet former President Bill Clinton. Appellant stated she should have called in earlier, but due to circumstances could not (when she missed work to meet the President.) Appellant stated she had since never been given a written reprimand for any similar conduct.

56. Though she did not appeal it, Appellant disputes the propriety of the suspension of August 9, 2010. Appellant states that her son, who has a medical condition amounting to a disability (as the Hearing Officer understands it), was applying for Food Stamps and had done so in a county not of his residence. Appellant states this is not a problem to apply for benefits in a county not of your residence, though of course the actual case has to be carried in the county where you reside. Appellant states she did not intervene on behalf of her son, but merely accompanied him to the office.

57. Appellant also discussed the written reprimand made part of Appellee's Exhibit 2, dated May 4, 2012. Appellant states that prior to this meeting, she believed that she was going to be meeting with Grace Akers, Steve Courtney and Danielle Chapman to discuss Danielle Chapman's work performance, which was sub-par. However, the meeting included only Appellant, Steve Courtney and Grace Akers, and was the meeting where she received the May 4, 2012 written reprimand. Appellant states that Danielle Chapman had made a formal complaint against her, and also Appellant disputed the other part of the written reprimand having to do with a client complaint and explained why.

58. Appellant also testified as to what was referenced in the written reprimand dated May 4, 2012, as to her having a mentor. Appellant stated the mentor was supposed to be Marshay Boyd, and her having a mentor was also referenced in her performance improvement plan (PIP) in her interim evaluation she received in April or May 2012. In the presence of Grace Akers, Appellant states that Steve Courtney stated that he was not aware if Marshay Boyd had mentored her, but that she was supposed to have done it. Appellant stated it had never happened. (The Hearing Officer would note this comports with Ms. Boyd's testimony earlier.)

59. Appellant stated the majority of cases she read had no errors, though there were 24 cases she had read which apparently had errors. This is in relation to the QC charge in the letter of demotion.

60. Appellant was referred to Appellee's Exhibit 6, the first e-mail therein, which was dated August 15, 2012, from Steve Courtney to Kimberly Tucker. In reviewing the comments made by Mr. Courtney referencing the other supervisors and the other units in Fayette County (Appellant noted that she had the only Adult Medical Unit and the other supervisors were all of

the "generic" units), Appellant pointed out that all of the other supervisors noted were all more fully staffed than she.

61. Appellant testified that the error rate identified in the letter of demotion, at least in her case, could partly be explained by her having to be able to rely on her Workers to accurately conduct interviews and also that she, when reviewing such cases, does not have the ability to re-interview the client, unlike QC, and that Appellant, having to read so many cases due to not being fully staffed, would not have as much time to review each case. Appellant stated that sometimes errors can be made even if clients provide the correct information, and sometimes clients also mischaracterize or mislead and do not provide accurate information to the Workers.

62. Appellant stated that as far as QC error rates went for her Workers, she knew that David Bachert's, prior to his promotion to Principal Worker, had a QC error rate of 50% (7 out of 14 QC cases reviewed.)

63. Appellant then testified in detail as to the cases cited in the letter of demotion, that Appellant had approved some of these cases, and that in others, she was notified of errors but failed to correct them. The testimony was as follows:

> Client #1 in the letter of demotion had been assigned to David Bachert, and involved a case where the Client had a rise in the level of Social Security income which had not been reported. Appellant stated that the correction was made in August, 2012.
>
> Client #2 in the letter of demotion was a "vacant" caseload, where the case worker had left. Appellant stated she was notified of this on January 11, 2012, and completed and corrected that error the same day. In fact, the Hearing Officer notes the letter of demotion states that, "You were notified of this error on January 11, 2012, but you did not correct this error until January 11, 2012."
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> Regarding Client #3 in the letter of demotion, Appellant had signed off on an error committed by Case Worker Constance Jones, but when notified of this on March 13, 2012, the error was corrected and the proper form submitted by March 30, 2012.
>
> Regarding Client #4 in the letter of demotion, this had been handled by Case Worker Danielle Chapman. Appellant stated she did make a mistake in reviewing this, viewing it as only a recertification, not a reapplication, but when notified of the mistake on July 26, 2012, the error was corrected timely.
>
> The correction required for Client #5 was merely that some documents needed to be scanned which had not been scanned. This was corrected one month after being notified of the error.

For Client #6, Constance Jones was again the Case Worker, and the error made was not checking boxes on an otherwise properly completed form. When notified of the error, they re-scanned the paperwork with the boxes checked and submitted it.

For Client #7, again with Constance Jones the Case Worker, some documents had not been properly scanned. When scanned, sometime after notification, there was no harm, as the Client was still eligible for benefits.

For Client #8, again the Case Worker was Constance Jones, and expenses had not been verified by the Client, which resulted in additional liability. Once notified of the error, this was corrected in a week's time.

For the allegations detailed for Client #9 in the letter of demotion, Appellant stated that neither she nor Jerry Gross knew what was detailed was actually policy, so Appellant and her staff learned from this. When notified, this matter was corrected upon August 13, 2012.

As to Client #10, the issue was an error made about whether a person was eligible to receive adult medical assistance and the documentation had not been properly entered. On notification, Appellant stated, there was a timely correction made.

For Client #11, Appellant took issue that it stated she had never corrected the errors from this case that had been Worker Erica Carson's, who had left. Appellant stated that no correction was really needed, however, she did complete the proper form (a 343.1) on March 30, 2012, and sent it to Grace Akers, Steve Courtney, Jerry Gross and the eligibility people. Appellant stated Client #11 was deceased, and she could not go back and correct such an error after the Client is deceased.

For Client #12, which had been Danielle Chapman's case, the proper verification of a premium being paid had not been provided. Once the error was discovered, Appellant states it was timely corrected. Appellant stated for Client #12, this was another case where neither she nor Jerry Gross, the policies specialist for Medicaid, was aware of the policy which was cited.

For Client #13, also Danielle Chapman's case, the error was received in June 2012.

For Client #14 on the letter of demotion, this was handled by Case Worker Sarah Jacobs. Apparently the Client's responsibility or liability was calculated by the Worker to be some $200 less than it should have been. Appellant testified the correction was made on August 14, 2012, after being notified on August 9, 2012, and an e-mail being sent to Grace Akers, Steve Courtney, Jerry Gross and Frankfort DMS.

For Client #15, handled by Worker Felty, there was an error because the Client did not initially report a stipend income, which was caught by QC on a re-interview. Appellant stated the income was added, and the proper form submitted, correcting the error on August 13, 2012.

Client #16 was a case of Danielle Chapman. There had been a misreporting from a representative of a Client which QC was able to catch due to its having the ability to make what Appellant termed as "collateral contacts" (in this instance, a contact with a third-party insurer.) Appellant stated she had corrected the error and it was reported.

Client #17 was also a case worked by Danielle Chapman. As Appellant testified, this error was due to having used the wrong forms. Appellant stated that Katie Brown apparently retired from DMS, that what was listed really wasn't an error and that they would be allowed to "pull forward" in the same month if that had been done. In any event, the error was corrected and reported.

Client #18 was another case worked by Danielle Chapman. An AARP premium increase had not been entered, which affected the patient's liability by $8. This was corrected and the error reported appropriately a few weeks later.

Client #19 was also a case worked by Danielle Chapman. For this, Appellant's team had been notified of the error on August 13, 2012, and this was corrected and reported on August 14, 2012.

Client #20 was also a case worked by Danielle Chapman. This was the case of a child who was ultimately determined to be disabled. Appellant stated that the errors were corrected, even though the 343.1 form had been submitted untimely (some six months' after the notification of errors.)

(Hearing Officer's note: The Hearing Officer understands the 343.1 form to be an internal form used by the Cabinet to report correction of errors. In other words, errors could well be corrected without the form having been submitted, whether timely or untimely.)

Client #21 was a vacant case load, and the error was received by Appellant's team on March 13, 2012. This was a case of another premium increase for a Client, which the Client did not verify. Appellant stated her team was not able to allow that for the Client. QC was able to verify the error, which affected the Client's liability. This was a case of QC being able to make another collateral contact with a third-party insurer. The Hearing Officer notes that only three weeks passed between the notification of the error and the correction and report of this error.

Client #22 was another case worked by Danielle Chapman. The error here was apparently that the Worker had sent two forms requesting, as best the Hearing Officer can gather, asset verifications from local banks to the same bank, instead of sending the form to two banks. This error was corrected by sending this form, which is identified as a PAFS-18, to another bank. The error was corrected, though the 343.1 form was not submitted until August 14, 2012.

Client #23 was another case worked by Danielle Chapman. Appellant stated that apparently this was a case where her mind wasn't clear whether the deductions in question could be allowed, but ultimately they were; the errors, as reported, were corrected with the form submitted admittedly late.

Client #24 was a vacant case load with the error received August 15, 2012, and corrected and e-mailed on August 20, 2012. Apparently this error was typographical.

At this point, the Appellant, and also the Hearing Officer, noted that on the letter of demotion at the bottom of page 5 there was a mistake where the #24 was used. This should have been identified as "Client #25." Thus, the Hearing Officer will address the remaining clients instead of being #24 through #29, which is in error, as #25 through #30, due to the numbering error made by the agency.

This is verified by comparing the letter of demotion, which is part of Appellee's Exhibit 2, with the QC error sheets and information, which were introduced collectively as Appellee's Exhibit 4.

As to Client #25, which is part of this subset of allegations in the letter of demotion, stating that Appellant had been notified by QC of errors which needed to be corrected and she failed to correct the errors. Appellant disputes that she never corrected the issue for Client #25 (again, noted incorrectly on the letter of demotion as Client #24.)

For Client #26 (identified incorrectly on the letter of demotion as Client #25), Appellant stated her unit was notified in June 2012, and she corrected this and submitted the proper paperwork on August 13, 2012.

For Client #27 (identified incorrectly on the letter of demotion as Client #26), Appellant states the unit was notified of the error in July, 2012, and the errors were corrected and the proper form submitted on August 14, 2012.

For Client #28 (identified incorrectly on the letter of demotion as Client #27), Appellant stated this had been one of David Bachert's cases. Appellant stated she did not sign off on this error, that Bachert had corrected the errors and she had submitted the proper form on August 13, 2012.

For Client #29 (identified incorrectly on the letter of demotion as Client #28), Appellant stated this was a "Z" case. Apparently the Client in this case had sent in the paperwork October 2011, but the Worker did not record it. Appellant states that when the Worker did not put the information in timely, the case was denied. Appellant stated that when she reviewed it, the Worker did correct it, but when she reviewed it she did write the Worker up because the Worker had allowed the Client's case to deny. Appellant stated there was nothing to correct because the Worker had put it back in and the matter was fixed. Appellant stated she did not respond with the proper form (the 343.1) until August 14, 2012, explaining the issue.

For Client #30 (identified incorrectly on the letter of demotion as Client #29), this was a case assigned to Clay Morton and the QC error had been received by Appellant's team on July 9, 2012. This was corrected and with the proper form submitted in August, 2012.

64. Appellant stated that of the QC errors listed in the letter of demotion alleging she had not reported or corrected, 11 of those were reported and/or corrected. Appellant also testified there were several "errors" reported which she would dispute were substantive errors, such as not scanning documents.

65. After concluding the very detailed and lengthy testimony regarding each of the QC error cases listed in the letter of demotion, Appellant testified generally about some other subjects, such as her previous evaluations. Appellant pointed out that she had a Highly Effective rating on the calendar year 2011 evaluation, and was noted to have a timely processing rate of 95%, and explained what that meant.

66. Appellant offered further testimony about the QC error rates noted on her evaluations, again those being due to, in Appellant's testimony, the massive number of cases she read and the lack of help for most of that time.

67. Appellant testified that since the evaluations, her error rates have gone down, both for herself personally on the cases she reviewed, and on the ones for the team. Appellant denied that either Steve Courtney or Grace Akers had ever told her she would be at risk of a disciplinary action if her QC error rates did not go down or disappear.

68. Counsel for the Appellee then had questions for Appellant on cross-examination. Appellant stated she was not sure how many Grievances had been filed against her by employees. As to Hospice, Appellant clarified that when she said Hospice had unrealistic expectations as to bill payment, she did not mean that the expectation of being paid was unrealistic, but rather the manner in which they would attempt to seek reimbursement.

69. Counsel questioned Appellant about e-mail chains contained in Appellee's Exhibit 5, specifically the fifth page of that exhibit, the e-mail with Steven Courtney's name as the header, with an e-mail dated July 20, 2012, from Carmen Conley to Steven Courtney.

Counsel stated that she believed the "tone" of Carmen Conley's e-mail was that of one who had not gotten service. Appellant responded that she couldn't speak as to Ms. Conley's tone, but in reviewing that e-mail, stated that Carmen Conley does not take responsibility for some of the issues identified in the e-mail. Specifically, this includes the fact that Hospice, and Carmen Conley, would send the forms late, and/or would send them by multiple means which leads to confusion. Appellant stated that even after Carmen Conley stated she would send all the forms by e-mail, the unit would continue to receive reimbursement forms from Hospice in all manners, including receiving manila envelopes with as many as 30 different Clients' reimbursement forms.

70. Appellant stated that in regards to QC errors she started having weekly staff meetings regarding such in 2011, wherein Appellant and her staff would discuss the QC errors and she would read them and discuss what measures needed to be taken to prevent such in the future.

71. Appellant stated, in January 2012, she noticed they were having consistent errors which dealt with certain forms. Appellant stated that to deal with the error rates on these "18" and "16" forms, she would keep two folders in her office and the date the Worker was assigned the case. To combat the errors on the PVA forms, the Workers would place those forms in one folder which Appellant would then give to one of her Principal Workers, who would take those all at once to the County Clerk's office and fill them out to prevent QC errors. As to the errors on the other form which would go to the banks, Appellant herself went out and established relationships with banks. Appellant stated she would attempt to establish a pattern where she could drop the forms off one day of the week and come in on another set day to pick the forms up instead of having them mailed, which might have lead to confusion and loss. Appellant stated these practical steps actually reduced the QC error rates as has been shown in the evidence which is in the record.

72. Appellant denied she was opposed to using the electronic case file system when that was introduced. Appellant stated she thought that electronic case files would actually help QC error rates, because when QC would request a case, attempting to manually pull those was very daunting at times, with the massive file rooms. Appellant stated there were many reasons why it would be advantageous. Counsel for the Appellee challenged the Appellant, stating wasn't it true that she actually opposed converting over to electronic case filing. Appellant disagreed, stating there were glitches and it took months to work those out of the electronic files, and due to the glitches, there was actually a requirement that they maintain the paper files for at least two months after a file had been entered electronically to ensure it could still be retrieved in case a glitch took out the electronic file.

73. Appellant stated it was only in the last month, either December 2012, or January 2013, that she received an e-mail (in her current demoted position as Family Support Specialist II) that the glitches had been worked out and they no longer had to keep the paper files once a file was electronically entered.

74. Upon conclusion of Appellant's testimony, Appellant rested her case.

75. Appellee called **Mr. Steven Courtney** as a rebuttal witness. Mr. Courtney stated there had been over 20 Grievances filed by Appellant's subordinates against her. The witness stated, "there have been 'numerous' employees to show up on my doorstep" to describe the treatment they had received at the hands of the Appellant, and he said sometimes they were in tears.

76. Mr. Courtney offered some testimony about the appointment of Ms. Marshay Boyd as a mentor to Appellant. In fact, Mr. Courtney's testimony that Boyd had told him that the mentoring never happened because of Appellant's refusal to participate in such runs counter to the testimony offered by Ms. Boyd. (Ms. Boyd had testified it never happened at all, and did not testify as to that statement attributed to her by Mr. Courtney.)

77. Counsel for the Appellee also asked Mr. Courtney some questions regarding Appellant's Exhibit 5. The point counsel for the Appellee was making was that some of the corrections, errors or submission of error reports (343.1) made by Appellant were in fact subsequent to the request for major disciplinary action.

78. On cross-examination, Mr. Courtney stated he had begun compiling information in "the late spring" for the demotion request against Appellant. Mr. Courtney stated he did not ask Appellant about these various QC errors which were coming in; about why either corrections had not been made or the forms not filed.

FINDINGS OF FACT

1. During the relevant times, Appellant was a classified employee with status. Prior to the letter of demotion of September 13, 2012, Appellant had been a Field Services Supervisor (FSS) over the Adult Medical Unit, Bluegrass Service Region, centered in Fayette County. Subsequent to the demotion, Appellant is a Family Support Specialist II.

2. Also prior to the demotion, Appellant had been earning as an FSS $3575.68 monthly. Subsequent to the demotion, Appellant was earning $2979.74 monthly.

3. The Hearing Officer finds that Appellant to not only have been entirely credible during her testimony, but she was also persuasive and knowledgeable. The Hearing Officer finds this was evident throughout the course of her testimony, but especially so during the piece-by-piece refutation Appellant made to the specific charges against her for unsatisfactory performance of duties as related to the Quality Control (QC) errors. Appellant was also credible and persuasive when she addressed the allegation for unsatisfactory performance of duties as regards to the Hospice billing issues.

4. The Hearing Officer finds that the Appellee did not offer any witness who could testify even close to as knowledgeably as Appellant did regarding the allegations made against her. The Hearing Officer finds that the testimony of Appellant's previous supervisor, Steven

Courtney, and her previous second-line supervisor, Grace Akers, was long on supposition but short on specific knowledge of the facts of the allegations against Appellant. This is not necessarily an indictment of those two witnesses, but as the Hearing Officer finds, is not surprising considering the witnesses, Steven Courtney and Grace Akers, were removed from the day-to-day dealings with these issues which Appellant had. The Hearing Officer finds this was made evident over the entire course of the presentation of testimony.

5. Specifically, the Hearing Officer finds Mr. Steven Courtney, aside from reading some of the allegations against Appellant, had gathered that evidence, as he testified, and presented it to the Office of Human Resource Management (OHRM) within the Cabinet for Health and Family Services for OHRM to make a disciplinary decision.

6. The Hearing Officer finds Steven Courtney mainly had knowledge of the Grievances he says were filed against Appellant by many of her previous employees. He was also very knowledgeable about previous disciplinary and/or corrective actions taken against Appellant, which had been offered in evidence as part of Appellee's Exhibit 2.

7. The Hearing Officer finds that such knowledge undoubtedly played part in Mr. Courtney's decision to request major disciplinary action, but while serving as a backdrop for that decision, Appellant was not charged in her letter of demotion with inadequate supervision due to the over 20 Grievances Mr. Courtney states were filed against Appellant.

8. The Hearing Officer finds that Grace Akers had some knowledge of the strained working relationship which existed between Appellant and Mr. Courtney, and certainly had existed subsequent to Appellant having filed a complaint against Mr. Courtney in 2010, but had even less knowledge of the specific allegations against Appellant than did Mr. Courtney.

9. The Hearing Officer finds that the testimony offered by Jay Klein, while illustrative as to how he arrived at the decision of what disciplinary action to impose, was not persuasive at all as to the specific allegations against Appellant, as Mr. Klein admitted he had no knowledge of same except what had been presented to him.

10. The Hearing Officer finds the testimony of Jerry Gross, while persuasive for the limited purpose it was offered, only shed light on that part of the issue he primarily testified about, which was how he had received notice of the Hospice billing issues while Appellant had been on vacation in July 2012.

11. The Hearing Officer finds that for the allegations regarding Quality Control errors, the Appellant's detailed testimony as to each of the allegations demonstrates that ultimately Appellant's main responsibility in which she failed, and only on some of the cases cited, was not filing the proper paperwork notifying the chain of command that the errors cited by QC had been corrected. Even as to that, Appellant filed such paperwork subsequent to having received the request for major disciplinary action and prior to being demoted.

12. The Hearing Officer finds this to be important, because on cross-examination Mr. Courtney stated he had begun compiling evidence to support a major disciplinary action, specifically demotion, against Appellant in late Spring 2012, but had never spoken with Appellant about the specifics of the allegations prior to requesting such disciplinary action.

13. The Hearing Officer finds the supposed neglect of Appellant regarding the Hospice billing issues was absolutely not proven and was unpersuasive. No witness testified from Hospice of the Bluegrass, and the witnesses for the Appellee who testified with such knowledge again reported only second-hand knowledge of such, either through hearsay or communications from employees of Hospice. The Hearing Officer points to Mr. Courtney's testimony and evidence placed into the record by Appellee in Appellee's Exhibit 5, showing communications between Mr. Courtney and Carmen Conley of Hospice of the Bluegrass.

14. The Hearing Officer finds persuasive and accepts as true the unrebutted testimony of Appellant and others, including Clay Morton, that Hospice would send bills in by multiple means (to include faxes, U. S. mail, and scan/e-mail) which caused confusion and delay in processing payment requests. Likewise, the Hearing Officer finds persuasive and essentially unrebutted Appellant's testimony that Carmen Conley of Hospice of the Bluegrass never followed-through on some the promises she had made to Appellant following the February 16, 2012 meeting; specifically, that no longer would billing requests be sent in by more than one means of transmission.

15. The Hearing Officer finds as true the Appellant's testimony regarding that Hospice, alone among the Medicaid providers in Fayette County, had significant issues in late billings and unrealistic expectations. (Again, no testimony offered by the Appellee rebutted the specific and knowledgeable testimony made by Appellant. The only witness called by Appellee who had any real knowledge of Hospice billings issues, or at least testified to such, Jerry Gross, stated he had limited involvement with it, and that only because Carmen Conley of Hospice had sent him the alleged billing problems she had had with Appellant while Appellant was on vacation.)

16. In summation, the Hearing Officer finds that Appellee failed to prove any of the major allegations against Appellant during the course of this evidentiary hearing. The Appellee did prove, or more appropriately, Appellant admitted, that the 343.1 forms on several of the QC error cases cited in the letter of demotion had been submitted late, although they had been submitted. The Hearing Officer finds otherwise the QC error allegations were often erroneous on their face in the letter of demotion, as proven by the Appellant in her detailed testimony regarding same.

17. The Hearing Officer finds entirely unsupported the allegations regarding the Hospice billings.

CONCLUSIONS OF LAW

1. The Hearing Officer concludes as a matter of law that pursuant to KRS 18A.095(8), the Appellee failed in its burden of proof to demonstrate just cause for the disciplinary action taken.

2. The Hearing Officer concludes that the Appellee did prove certain of the QC error allegations, specifically failure to file the 343.1 forms, but this would not support the drastic disciplinary action taken. The Hearing Officer notes that the corrective actions and one disciplinary action Appellant had previously received were for relatively minor infractions, which were disputed, if not rebutted, by Appellant. The Hearing Officer did not reach a finding or make a conclusion regarding Appellant's contention that the reason she was demoted was because of her having filed a Grievance against Steven Courtney in 2010. The Hearing Officer will merely note that the evidence submitted by the Appellee in support of the allegations contained in the letter of demotion fell woefully short of meeting the burden of proof to sustain such harsh discipline. Even had such allegations been entirely proven, the Hearing Office is not convinced the discipline imposed was proper, but the Appellee was nowhere near proving these allegations.

RECOMMENDED ORDER

The Hearing Officer recommends to the Personnel Board that the appeal of **DONNA CONLEE V. CABINET FOR HEALTH AND FAMILY SERVICES, (APPEAL NO. 2012-219)** be **SUSTAINED**, that the Appellant be returned to her previous position or to a like position with status, with restoration of rights and privileges appurtaining thereto, along with the restoration of salary and any back pay to which she may have been due during the time she was unlawfully removed from her position as Field Services Supervisor. KRS 18A.105 and 200 KAR 12:030.

The Hearing Officer also finds that pursuant to KRS 18A.095(25) that Appellant be made whole to the extent that any leave time expended in attending pre-hearing conferences or the evidentiary hearing be restored to her as well.

NOTICE OF EXCEPTION AND APPEAL RIGHTS

Pursuant to KRS 13B.110(4), each party shall have fifteen (15) days from the date this Recommended Order is mailed within which to file exceptions to the Recommended Order with the Personnel Board. In addition, the Kentucky Personnel Board allows each party to file a response to any exceptions that are filed by the other party within five (5) days of the date on which the exceptions are filed with the Kentucky Personnel Board. 101 KAR 1:365, Section 8(1). Failure to file exceptions will result in preclusion of judicial review of those issues not specifically excepted to. On appeal a circuit court will consider only the issues a party raised in written exceptions. See *Rapier v. Philpot*, 130 S.W.3d 560 (Ky. 2004).

Any document filed with the Personnel Board shall be served on the opposing party.

The Personnel Board also provides that each party shall have fifteen (15) days from the date this Recommended Order is mailed within which to file a Request for Oral Argument with the Personnel Board. 101 KAR 1:365, Section 8(2).

Each party has thirty (30) days after the date the Personnel Board issues a Final Order in which to appeal to the Franklin Circuit Court pursuant to KRS 13B.140 and KRS 18A.100.

ISSUED at the direction of **Hearing Officer Boyce A. Crocker** this 23rd day of April, 2013.

KENTUCKY PERSONNEL BOARD

MARK A. SIPEK
EXECUTIVE DIRECTOR

A copy hereof this day mailed to:

Hon. Marian Hogan
Hon. Elliott C. Miller